

HIGHLAND BOARD OF ZONING APPEALS
Minutes of the Meeting of
April 28, 2021

The Highland Board of Zoning Appeals met on the Zoom Platform, Meeting ID: 992 4725 7686, Passcode: 034491 on April 28, 2021 at 6:30 p.m. Central Time (US and Canada). Mrs. Murovic called the meeting to order at 6:30 p.m. The meeting opened with the Pledge of Allegiance led by Mr. Helms.

ROLL CALL: Present were Board Members Mr. Martini, Mr. Grzymiski, Mr. Helms, Mr. Thomas and Mrs. Murovic. Also present was Building Commissioner/Zoning Administrator, Mr. Ken Mika and Town Attorney, Mr. John Reed.

MINUTES: The minutes of the March 24th, 2021 meeting were approved as posted.

ANNOUNCEMENTS: The next meeting of the Board of Zoning Appeals to be May 26, 2021.

COMMUNICATIONS: None

Old Business: Approval of Findings of Fact for APA Development, LLC c/o Jared Tauber, 1415 Eagle Ridge Drive, Schererville, IN 46375, requesting a Developmental Variance for the construction of a temporary outdoor baseball infield in the existing parking lot at 3150 45th Street, Highland, IN 46322. {HMC 18.45.020} (A) Limitations of Use. Permitted uses in the B-3 district are subject to the following additional general limitations: (A) All businesses, Sales, Services, Processing or Storage shall be conducted in completely enclosed buildings.

Mr. Martini motioned to approve the Findings of Fact for APA Development, LLC. Mr. Thomas seconded and the motion was approved unanimously with a roll call vote of 5 – 0.

New Business: Public Hearing for Rogelio Castillo, 2145 41st Place, Highland, IN 46322, requesting a variance to replace a fence beyond the build line. Property is on a corner. {HMC 18.05.060}(G)(5)(a) Permitted Obstruction in Required Yards. The following shall not be considered to be obstructions when located in the required yards specified: (a) In All Yards. Ordinary projections of skylights, sills, belt courses, cornices and ornamental features projecting not to exceed 12 inches; open terraces or decks not over four feet above the average level of the adjoining ground but not including a permanent roofed-over terrace or porch and not including terraces or decks which project into the required front yard by more than six feet from the front of the principal structure; awnings and canopies; steps which are necessary for access to a permitted building or for access to a zoning lot from a street or alley; chimneys projecting 18 inches or less into the yard; arbors, trellises and

flagpoles; fences, screens, hedges and walls; provided, that in residential districts no fence or wall shall be located in the required front yard and no landscaped screen or hedge shall exceed three feet six inches in height if located in the front yard, and no fence, landscaped screen, hedge or wall shall exceed six feet in height if located in a side or rear yard. On a corner or reverse corner lot, the side yard setback shall be the same as the front yard setback on adjoining lots; fences shall not be installed beyond this point. No fence, screen, hedge or wall shall interfere with line of sight requirements for local streets or intersections. No fence, screen, hedge or wall shall be constructed of material that may be described as rubble, cardboard, chicken wire, trees and brush, corrugated tin, utility poles, railroad ties, barbed wire, broken glass or electrified material. The design, location and construction of a fence or wall shall be approved by the building commissioner prior to the issuance of a building permit.

Mrs. Murovic asked if there was a petitioner present to represent this petition. Mr. Rogelio Castillo introduced himself as the petitioner and stated his address.

Mrs. Murovic asked Attorney Reed if the Proof of Publication was in order. Mr. Reed responded that it had been reviewed and that it was published more than 10 and less than 30 days prior to the meeting and that the proof was in the record. Mr. Mika stated that the sign had also been posted accordingly.

Mrs. Murovic asked Mr. Castillo to proceed with his petition request. Mr. Castillo stated that his fence on the west side of his house had a couple of posts that had started to rot and he decided that he would like to beautify his property by replacing the existing fence. He said that he was told by the Town that he would have to place his fence at the build line. He continued that if he did that, he would lose a large portion of the patio, as well as his garden. He said that he did not have the money to replace the patio that he would lose, along with the fence. He stated that his house did stick out a little further than others nearby because his home faces 41st Place and all the homes on Prairie sit back about 23' from his property. He concluded by saying that if he brings his fence in to the build line, he would have to pay someone to remove part of his patio and money would be an issue. He was hoping to be able to keep the new fence in the existing location.

Mrs. Murovic opened the meeting to the public for discussion. Hearing no remonstrance, she brought the meeting back to the Board.

Mr. Thomas asked what the patio was constructed of. Mr. Castillo responded that the patio was concrete with 3' of wood around the perimeter. He was told by the fence company that the entire 3' of wood, along with 2' of the concrete would have to come out along the east side of the property in order to construct the new fence. He continued to say that he had already put down a deposit with the fence company before they applied for the permit. Mr. Thomas asked how far the concrete patio was from the existing sidewalk. Mr. Castillo responded that it was about 8'-11" from the concrete patio to the end of the fence, which was currently close to the sidewalk. Mr. Thomas asked if the fence was moved 3' or 4' in, if it would mess with the deck or patio. Mr. Castillo said it would not affect the deck because the deck was a foot from the fence now. Mrs. Murovic asked what the distance was from the concrete patio to the sidewalk. Mr. Castillo responded that it was approximately 7'.

Mr. Mika asked those present to take a look at one of the photos provided by the petitioner, photo #8 and continued that the concrete patio, if squared off in relationship to the wood deck, it was pretty obvious in the photo. He then stated that there was a concrete walk that goes from the patio to the gate and he assumed, goes out to the sidewalk. He then stated that a majority of what exists along the fence line is the wood deck. Mr. Thomas stated that if the fence were to be brought to the build line, he would lose the pad that his garbage cans were on and the wood deck that currently exists there. Mr. Castillo stated that was correct and said he would lose 126 square feet of the patio and about 198 square feet of yard. Mrs. Murovic asked if he could provide the distance in feet. Mr. Castillo said the yard loss would be 22' x 9' and the patio would be 17' x 18'. Mrs. Murovic asked if there had been anything provided that had any kind of dimensions that they could review. Mr. Castillo responded that there was only one photo provided that showed distance from the edge of the fence to the side of the house, which was picture #11. Mr. Thomas stated that it was 9' from the fence to the corner of the house. Mr. Castillo responded that was correct. Mr. Thomas stated that either way, if the fence was moved back, part of the patio would have to be reconstructed. Mrs. Murovic stated that if Mr. Castillo brought his fence back just a few feet, it would not have to involve the concrete patio. Mr. Thomas said that was correct and that only the wood would be affected. Mrs. Murovic stated that it concerned her that the fence was all the way to the sidewalk on the driveway side, close to his neighbor and she felt that would hinder the view of the neighbor when backing out of their driveway. Mr. Thomas agreed that was a concern. Mr. Helms stated that there had been several people in the past with the same situation and proposing a 45 degree angle near the driveway was the solution for exactly that issue. Mr. Martini stated that usually they would request 6' x 6' with 45 degrees cut at an angle. Mr. Helms continued that he could move the fence back 3' from the sidewalk, it would still preserve most of the patio and cut the 45 degree angle near the driveway, which would preserve the visibility. Mrs. Murovic stated that would preserve as much of backyard, also, which everyone appreciated. Mr. Martini stated that Mr. Castillo had an unusual situation with his patio and yard, which was a hardship in his opinion and he suggested making the setback from the sidewalk just 2'. Mrs. Murovic asked if this would still include the 45 degree angle. Mr. Martini replied that the angle would definitely still apply with this and it was necessary for the neighbor and safety when backing out of their driveway. Mr. Grzymiski stated he would be good with the compromise of the 2' setback and the 45 degree angle. Mr. Mika stated that before a motion was made, the Board should ask the petitioner if he was receptive to this compromise. Mr. Castillo asked if the Board was suggesting that he place his new fence 2' back from the sidewalk. Mrs. Murovic confirmed that was correct. Mr. Castillo stated that would cost him more money to make those changes. He then asked if what the Board meant by a 45 degree angle was to place the last 6' of fence at a 45 degree angle by the neighbor's driveway. Mr. Thomas stated that it would be a triangle shape by the corner of the fence. Mr. Helms stated that the Board had done that many times in the past. Mr. Reed stated that 6' short of the driveway, he would start the 45 degree angle and then it would be at the angle until it hooked up to the back line of the fence, so it would be a pie cut out right at that section. Mr. Helms stated that he would want to preserve as much of his yard as possible, so they didn't want to cut it down too much. He continued that if he is already back two feet off the line, maybe it wouldn't have to be quite 6 feet, it could possibly be only 4 feet with the angle. Mr. Mika stated that whatever the east-west run would be, it would be in comparison to the north-south, wherever that would terminate. Mr. Castillo stated it would

look kind of weird having a 45 degree angle with a fence. Mrs. Murovic stated that it has been done many times in the past when there is a driveway so close to the fence, then stated that Mr. Castillo's property was also very close to a public park and there were safety issues with pedestrians and foot traffic increased. Mr. Grzyski stated that the 45 degree angle would be in the area of picture #3, which was among the photos Mr. Castillo had provided to the Board. Mr. Castillo then stated that he understood where the Board was asking him to add the 45 degree angle, but continued that he thought it would look kind of odd. Mr. Grzyski stated again that the reason they are requesting the angle is for the sight line regarding the neighbor's driveway, so they have a better line of vision to pedestrians when backing out of their driveway and that it was a safety issue. Mr. Thomas stated that the other alternative is to have the fence 9' off the sidewalk, at the build line of his house. Mrs. Murovic stated that the option with the angle was the best they could do, other than having it at the build line, where it was actually supposed to be, per ordinance. Mr. Reed asked Mr. Castillo to imagine a young child running along the fence line in question, while his neighbor was backing out of their driveway and it would be impossible for the driver to see the child. Mr. Helms stated this was the very reason for the statute change to the ordinance and Mrs. Murovic agreed. Mr. Helms said this is a compromise and this is what has been made in the past. Mr. Castillo stated that he was hoping to get this grandfathered in since he moved in 6 years earlier and he wasn't aware of the fact that his fence would not be allowed to be replaced in the same location it was currently in. Mr. Helms stated that historically, since he has been on the Board, a request like this never been approved and has never happened. Mr. Castillo asked if he could leave the fence as it is and if that would be an issue. Mrs. Murovic replied that eventually that would become a maintenance issue and the Building Department may have to step in, as there could be code violations. She continued that the pictures showed that the fence is wearing and he could be cited for maintenance issues. Mrs. Murovic stated that the Board would rather have the fence 3' to 4' set back from the sidewalk rather than the 2' that has been proposed, with the 45 degree angle and that this was a generous compromise that the Board was agreeing to so that most of Mr. Castillo's yard can be used. Mr. Castillo said okay. Mrs. Murovic stated the Board appreciated that. She then asked if there were any more questions. Mr. Helms mentioned that the petitioner could bring the angle in 2' as well, where the fence came against the driveway, which would preserve the aesthetics a little, but he would lose a bit more of his yard. Mr. Castillo stated he would not like that option, due to the fact that he would lose his garden all along that side. Mr. Helms stated that he felt the petitioners discomfort with what the Board was suggesting, but wanted to reiterate the fact that this proposal was a very large compromise from the Board. He continued that normally, the fence would have to be brought off the sidewalk 3' to 4'. He concluded by saying that the Board was really trying to work with him and they were making a big concession. Mrs. Murovic stated that the Board really does give the requests a lot of thought and that they understand how much Mr. Castillo wants to keep as much of his yard as possible and they take the additional cost into consideration. Mr. Castillo asked, looking at picture #3, if the 45 degree angle would start at the 2' point off the sidewalk. Mr. Mika answered yes, the 2' off the sidewalk back to whatever the 45 degree angle comes out to be on the east-west run, which is the back of the property, next to the driveway. Mr. Castillo stated he was trying to figure out how much yard he would lose on that corner. Mr. Thomas calculated that would be approximately 18 square feet. Mr. Helms said it wouldn't be that much, it would be about 9 square feet.

Mrs. Murovic pointed out that the fence was already 2' off the sidewalk. Mr. Helms said it may only be about 7 or 8 square feet lost. Mr. Castillo asked if, when the fence company comes out, if the Town could tell them the measurements for the 45 degree angle. Mr. Mika said that the company could contact the Building Dept. and they will work with them in reference to that. Mr. Castillo replied that was okay.

Mrs. Murovic asked the Board if anyone would like to make a motion.

Mr. Helms motioned that the Board allowed the construction of the fence with a 2' setback from the sidewalk on the east side, facing Prairie Avenue, obtaining a 45 degree angle on the north-east corner.

Mr. Thomas seconded the motion and it unanimously passed with a 5 – 0 roll call vote.

BUSINESS FROM THE FLOOR: None

ADJOURNMENT: Motion: Mr. Grzymski Second: Mr. Martini Time: 7:06 p.m.